MONTANA LEGISLATIVE HISTORY

Chapter 299 19 89

Bill H 172 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Natural Res.		
Hearing Date(s)	1-24	✓ C	Hearing Date(s)	3-3	✓ C
		C		3-6	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HB 170 INTRODUCED BY HAYNE, ET AL.
MAKE DISCRETIONARY DEPARTMENT OF AGRICULTURE DUTIES ON CROP INSECT DETECTION AND MANAGEMENT
BY REQUEST OF DEPARTMENT OF AGRICULTURE

1/13	INTRODUCED		
1/14	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
1/20	HEARING		
1/21	COMMITTEE REPORT--BILL PASSED		
1/24	2ND READING PASSED	63	36
1/26	3RD READING PASSED	68	29
	TRANSMITTED TO SENATE		
1/27	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
2/10	HEARING		
2/13	COMMITTEE REPORT--BILL CONCURRED AND PLACED ON CONSENT CALENDAR		
2/15	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/02	SIGNED BY SPEAKER		
3/03	SIGNED BY PRESIDENT		
3/03	TRANSMITTED TO GOVERNOR		
3/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 53 EFFECTIVE DATE: 3/07/89		

HB 171 INTRODUCED BY SWIFT, ET AL.
REQUIRE WRITE-IN CANDIDATES TO FILE DECLARATION OF INTENT

1/13	INTRODUCED		
1/14	REFERRED TO STATE ADMINISTRATION		
1/31	HEARING		
2/07	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/10	2ND READING PASSED AS AMENDED	84	9
2/13	3RD READING PASSED	82	13
	TRANSMITTED TO SENATE		
2/14	REFERRED TO STATE ADMINISTRATION		
3/09	HEARING		
3/09	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/10	2ND READING CONCURRED	26	13
3/13	3RD READING CONCURRED	41	8
	RETURNED TO HOUSE WITH AMENDMENTS		
3/15	2ND READING AMENDMENTS CONCURRED	77	0
3/16	3RD READING AMENDMENTS CONCURRED	92	5
3/23	SIGNED BY SPEAKER		
3/27	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		
3/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 391 EFFECTIVE DATE: 3/30/89		

HB 172 INTRODUCED BY SWIFT, ET AL.
MAKE IT A CRIME TO PUT SUBSTANCE INTO TREE OR WOOD TO HARM LOGGING OR OTHER EQUIPMENT

1/13	INTRODUCED		
1/14	REFERRED TO JUDICIARY		

1/23	HEARING		
1/24	COMMITTEE REPORT--BILL PASSED AS AMENDED		
1/26	2ND READING PASSED	71	22
1/28	3RD READING PASSED	70	24
	TRANSMITTED TO SENATE		
1/30	REFERRED TO NATURAL RESOURCES		
3/03	HEARING		
3/07	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/08	2ND READING CONCURRED	48	1
3/10	3RD READING CONCURRED	47	1
	RETURNED TO HOUSE WITH AMENDMENTS		
3/13	2ND READING AMENDMENTS CONCURRED	87	3
3/14	3RD READING AMENDMENTS CONCURRED	93	3
3/18	SIGNED BY SPEAKER		
3/20	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 299 EFFECTIVE DATE: 10/01/89		

HB 173 INTRODUCED BY NELSON, R., ET AL.
PHASE IN FINANCIAL IMPACT TO SCHOOLS RESULTING FROM AGGREGATION OF ANB

1/13	INTRODUCED		
1/14	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/16	FISCAL NOTE REQUESTED		
1/23	HEARING		
1/23	FISCAL NOTE RECEIVED		
1/24	FISCAL NOTE PRINTED		
2/11	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/14	2ND READING PASSED	79	12
2/14	TAKEN FROM ENGROSSING		
2/14	REREFERRED TO APPROPRIATIONS		
3/13	HEARING		
3/15	TABLED IN COMMITTEE		
3/20	TAKEN FROM COMMITTEE	87	10
3/22	2ND READING PASSED AS AMENDED	62	33
3/23	3RD READING PASSED	79	17
	TRANSMITTED TO SENATE		
3/27	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/29	HEARING		
4/01	COMMITTEE REPORT--BILL CONCURRED		
4/04	2ND READING CONCURRED	49	0
4/06	3RD READING CONCURRED	47	0
	RETURNED TO HOUSE		
4/17	SIGNED BY SPEAKER		
4/17	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 573 EFFECTIVE DATE: 4/20/89		

HB 174 INTRODUCED BY GRINDE
PROVIDE LIFETIME FISHING LICENSE FOR THE BLIND

1/13	INTRODUCED		

LC 0647/01

HOUSE BILL NO. 172

INTRODUCED BY Swift, Rehberg, Giacomich, Hoffman, Cobb, Druyvestein, Lum, Evans, Thomas

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING IT CRIMINAL MISCHIEF TO PURPOSELY OR KNOWINGLY INSERT INTO A TREE, LOG, OR PIECE OF WOOD THAT IS INTENDED TO BE HARVESTED, PROCESSED, OR MANUFACTURED A SUBSTANCE THAT IS HARD ENOUGH TO DAMAGE A SAW OR OTHER EQUIPMENT; AND AMENDING SECTION 45-6-101, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-6-101, MCA, is amended to read:

"**45-6-101. Criminal mischief.** (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; ~~or~~

(d) places in a tree, log, or any other wood, any steel, iron, ceramic, or other substance sufficiently hard to damage a saw or other wood harvesting, processing, or manufacturing equipment and he knows that the wood is intended to be harvested, processed, or manufactured; or

~~(d)~~(e) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of $300, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

-End-

Montana Legislative Council

INTRODUCED BILL

HB172

Form CS-32
Rev. 1985

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB168	1-14	1-31	1-31	1-31							
HB169	1-14	1-31	2-18			2-18					
HB172	1-14	1-24	1-24			1-24					
HB177	1-14	1-20	2-3			2-3					
HB178	1-14	1-20	1-25	1-25							
HB179	1-16	1-31	1-31	1-31							
HB185	1-16	1-27	2-6			2-6					
HB189	1-16	1-24	1-24	1-24							
HB194	1-16	1-24	TABLED	ON 1-24							
HB197	1-17	1-27	2-3			2-3					
HB204	1-17	1-30	1-31			1-31					
HB206	1-17	2-1	2-1			2-1					
HB231	1-17	1-26	2-1			2-1					
HB232	1-17	1-27	2-9			2-9					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 24, 1989, at 8:05 a.m.

ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. Mary McDonough

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 172

Presentation and Opening Statement by Sponsor:

Rep. Bernie Swift, House District 64 stated that HB 172 is an act making it a criminal mischief to purposely or knowingly insert into a tree, log, or piece of wood that is intended to be harvested, processed or manufactured, a substance that is hard enough to damage a saw or other equipment. Rep. Swift directed the Committee's attention to page 1, line 22 through line 1 of page 2. What this is saying is that if something is placed in a standing tree or a piece of tree that has been severed or cut into lengths and is intended to be processed, thus damaging the processing agent or the individual, will be known as criminal mischief. This is just adding a section to the law that is presently on the books. Rep. Swift commented that since 1985-1986 in the area that he represents, there has been about 3 or 4 different incidents of this type of problem arising. This particular type of problem is not known to the sawyers nor to the sawmill processors. When the saw hits the foreign material, the teeth of the saw (which are 1/2 inch thick or larger) fly into the air like a cannon blowing up a shell. This results in thousands of dollars in damage, plus personal injury and can only be avoided by intensive detection which takes much time. They never know if the material is in there or not. Rep. Swift stressed that this is not a simple bill, but it is a very important bill and it addresses key problems that are getting worse year by year.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Addy questioned why paragraph B isn't inclusive enough to prohibit the kinds of activities that Rep. Swift is so upset about. Isn't sub-paragraph D what we are adding as an example of the offense that is being described in subparagraph B? Rep. Swift stated that he feels that this offense is so vicious, damaging and costly that he portrays this to be exactly like the terrorists actions that are going on today. It needs to be specifically spelled out in the law so there is no question about what is being addressed.

Rep. Addy continued and asked why they don't make it a separate section of the code and pose a sterner penalty. Rep. Swift replied that he brought a facsimile bill from California before the legislative council that did exactly what Rep. Addy was questioning. It was more stringent, but he felt that if the Committee wanted to do so, they could. In California, Oregon and Washington they have had very dire personal injuries. They made it three times what this particular code in the Montana law does as far as penalties and reimbursements are concerned. Rep. Swift stated that he felt that this would be the best possible way to approach this problem so that everyone would be aware that they felt it was a serious problem.

Rep. Darko asked if any of the offenders have ever been caught. If so, what statute have they been prosecuted under? Rep. Swift commented that to his knowledge, none of them have ever been caught in Montana. That is why this is so serious. He thinks that something of this sort would hopefully deter some of this action.

Closing by Sponsor: Rep. Swift stated that this is added to the criminal mischief section of the code because he thinks it is very important that we have it. Although it is very difficult to detect who, what, and when this occurs, he thinks it should be there and hopefully we can stop some of

this from happening.

DISPOSITION OF HOUSE BILL 172

Motion: Rep. Eudaily made a DO PASS motion, seconded by Rep. Brooke.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Mercer suggested amendments in order to clarify and fix the bill. See attached committee report. Motion seconded by Rep. Hannah. A vote on the amendment was taken and CARRIED with Rep. Wyatt voting No.

Rep. Strizich stated that he agrees that this is supercilious. If they start enumerating all the criminal acts that constitute criminal mischief, they would also have to include derailing trains, sugaring gas tanks, and cutting brake lines. Rep. Strizich stated that dealing with criminal law, he can see that there are things that get stuck on the books that frankly, after a few years become kind of absurd looking because of the nature of the specificity. It is silly and the law is applicable as it is written. If they are having trouble prosecuting these cases, adding the specific language that has been introduced is not going to improve the prosecution. If there is something that they can do to improve the prosecution in the catching of the culprits, then they should act on that.

Rep. Darko agreed that putting this bill into law will not improve their chances any of catching the prosecutors.

Rep. Mercer stated that as the bill was being presented he had the same concerns that have already been commented upon. However, this seems to be a problem that the people are concerned about and want on the books, but are unable to do much to prevent this from happening. Rep. Mercer stated that he does not see what will be hurt from the passing of this legislation. To turn this down is a statement made by the committee that this is not a significant thing, and that would be dangerous. He does not think that they want to send those kinds of messages with those actions.

Rep. Addy commented that this bill is a perfect example of imposing specificity. This is a course in recent events more than a course in what the law shall read. He feels that if the bill were to be TABLED it would save the legislative process a great deal of work and will have cost the people of Montana nothing.

Rep. Eudaily stated that if the Committee did this with every bill that came to the Judiciary Committee, they would not be hearing many bills on the House floor. Practically every bill that the Committee receives has some kind of an

individualistic approach to it. The Committee would be making a big mistake if they thought that this bill didn't qualify to pose a serious enough problem.

Rep. Brown stated that with the amendment that was proposed by Rep. Mercer, it cleans the bill up a little bit. The folks that brought about this bill are in a highly heated position, both politically and sensitivity wise. Rep. Brown stated that he is going to vote for the bill.

Recommendation and Vote: Rep. Boharski made a motion that HB 172 DO PASS AS AMENDED, motion seconded by Rep. Gould. A vote was taken and CARRIED with Rep.'s Stickney, Wyatt, Strizich and Addy voting No.

HEARING ON HOUSE BILL 153

Presentation and Opening Statement by Sponsor:

Rep. Smith, House District 5 stated that HB 153 was requested by the Divisional Workers' Compensation. This bill deals with attorney fee liens. He stated that the previous night they represented the insurance people, the attorneys, the division, the adjuster and the laborer. The general consensus was that it would do more harm than good to pass this bill and therefore, would request the Committee to TABLE HB 153.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: None.

Closing by Sponsor: None.

DISPOSITION OF HOUSE BILL 153

Motion: Rep. Addy made a motion to TABLE HB 153, motion seconded by Rep. Darko.

Discussion: None.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 24, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH			X
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

STANDING COMMITTEE REPORT

January 24, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 172 (first reading copy -- white) do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Page 1, line 23.
Strike: "sufficiently hard"
Insert: "with the purpose"

2. Page 1, line 25, through line 1 on page 2.
Strike: "and he" on page 1, line 25, through "manufactured" on page 2, line 1

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 172 DATE Jan. 24, 1989

SPONSOR REP. SWIFT

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Jim Jensen	Helena MEIC	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

CHAIRMAN--TOM KEATING
SECRETARY-HELEN MCDONALD
NORMAL SCHEDULE==> SITE: ROOM 405 DAYS: M,W,F TIME: 1:00 P.M.

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0082	1/23	1/30		CONCUR		1/31
O'KEEFE, MARK			DESIGNATE ARBOR DAY AS OFFICIAL DAY OF OBSERVANCE IN MONTANA			
HB0133	2/06	3/03		CONCUR		3/04
HAYNE, HARRIET			GENERALLY REVISE LAWS RELATING TO STATE OIL AND GAS LEASE PAYMENTS			
HB0143	3/22	3/29		CONCUR		3/30
SCHYE, TED			OIL AND GAS WELL PLUGGING COSTS PAID FROM RITT INTEREST			
HB0172	1/30	3/03		CONCUR AS AMENDED		3/07
SWIFT, BERNIE			CRIME TO PUT SUBSTANCE INTO TREE OR WOOD TO HARM LOGGING OR OTHER EQUIPMENT			
HB0274	2/10	3/10		CONCUR		3/21
QUILICI, JOE			AUTHORIZING DSL TO INVESTIGATE USE OF EXPLOSIVES RELATED TO HARD-ROCK MINING			
HB0327	2/14	3/06		CONCUR		3/07
GIACOMETTO, LEO			EXTEND PRIMARY TERM OF STATE OIL AND GAS LEASES AFFECTED BY LITIGATION			
HB0362	2/06	3/03		CONCUR AS AMENDED		3/04
BROWN, DAVE			ALLOW STATE TO ACCEPT FEDERALLY CONDEMNED LAND			
HB0482	2/28	3/08		CONCUR		3/09
COCCHIARELLA, VICKI			ALLOW LOCAL REVIEW OF PUBLIC NONCOMMUNITY WATER AND SEWER SYSTEMS			
HB0486	2/28	3/08		CONCUR AS AMENDED		3/17
GRADY, ED			REQUIRE GROUNDWATER MONITORING AT CERTAIN LANDFILLS AND WASTE DISPOSAL SITES			
HB0540	2/28	3/08		CONCUR		3/09
RANEY, BOB			REQUIRES DHES APPROVAL OF WATER SUPPLY AND SEWAGE PLANS BEFORE CONSTRUCTION			
HB0581	2/28	3/01		CONCUR		3/02
IVERSON, DENNIS			REVISE HARD-ROCK MINING ACT			

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HOUSE BILL NO. 172

INTRODUCED BY SWIFT, REHBERG, GIACOMETTO, GOULD, HOFFMAN, COBB, DRISCOLL, OWENS, THOMAS, ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING IT CRIMINAL MISCHIEF TO PURPOSELY OR KNOWINGLY INSERT INTO A TREE, LOG, OR PIECE OF WOOD THAT IS INTENDED TO BE HARVESTED, PROCESSED, OR MANUFACTURED A SUBSTANCE THAT IS HARD ENOUGH TO DAMAGE A SAW OR OTHER EQUIPMENT; AND AMENDING SECTION 45-6-101, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-6-101, MCA, is amended to read:

"**45-6-101. Criminal mischief.** (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) places in a tree, log, or any other wood, any steel, iron, ceramic, or other substance ~~sufficiently--hard~~ WITH THE PURPOSE to damage a saw or other wood harvesting, processing, or manufacturing equipment ~~and-he-knows-that-the wood--is---intended---to---be---harvested,---processed,---or manufactured~~; or

~~(d)~~(e) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of $300, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be fined an amount

not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

-End-

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Thomas Keating, on March 3, 1989, at 1:00 p.m. in Room 405 of the State Capitol.

ROLL CALL

Members Present: Senators: Thomas Keating, Chairman, Larry Tveit, Fred Van Valkenburg, Loren Jenkins, Lawrence Stimatz, Pete Story, Bill Yellowtail, Elmer Severson, Cecil Weeding, Dorothy Eck and Jerry Noble.

Members Excused: None

Members Absent: Senator Darryl Meyer

Staff Present: Bob Thompson and Helen McDonald

HEARING ON HB 362

Presentation and Opening Statement by Sponsor:

Representative Dave Brown, House District #72, Butte-Silver Bow, introduced this bill. This bill comes under the Federal Emergency Management Agency (FEMA) regulations, which are a result of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The state and federal governments are seeking to work together to identify and eliminate hazardous waste contamination. In some instances some properties must be condemned in order to begin the reclamation. The Department of State Lands (DLS) currently does not have condemnation authority so the federal government has used its power to condemn properties identified in Montana as being a hazardous waste contamination. The federal government requires that the state must accept title to the lands condemned.

Because of current language in Section 77-1-211, the state cannot accept title to the lands unless there is specific legislative approval. This prohibition caused a substantial problem in attempting to clean up Mill Creek in Deer Lodge County where property was identified as having hazardous waste contamination because of the Anaconda Smelter. Subsequently the

per day oil well will generate as much local property tax as 6,240 cows, 7,900 grazing acres or 11,773 acres of tillable land. The oil well is a very good way to raise income for local government.

DISPOSITION OF HB 133

Discussion: Hearing is closed.

HEARING ON HB 172

Presentation and Opening Statement by Sponsor:

Representative Bernie Swift, District #64, introduced this bill to solve some of the "spiking " problems the logging industry has had since 1985. Spiking means placing metal or some other hard object into trees that would damage saws or manufacturing equipment. Representative Swift recalled a situation in the West Fork District where at least a dozen or more trees were "spiked". It is very difficult to find when or where this occurs. At the time this particular incident occurred, people in lumber jobs were being vandalized by having nails jammed in their tires. In 1986 on a sale in the Flathead National forest, the industry had to adjust the contract areas that were spiked and go in with metal detectors before processing those trees into logs. The cost was twenty to thirty thousand dollars. From 1986 into 1988 Champion International experienced spiked trees. In addition, dirt has been placed in crank cases in spouts of heavy equipment, dozers, etc.

The most recent incident was in November 1988 when five dozers crank cases were drained. The company lost three engines that amounted to twenty-five or thirty thousand dollars. Now that in itself is damaging and costly but the other part of it is when spiked logs are processed and they hit a band saw 40 or 50 feet long with teeth. When spiked trees hit a saw, it is just like a bullet exploding and that can cause serious injuries to workers. Representative Swift wants to deter this activity.

List of Testifying Proponents and What Group they Represent:

Tucker Hill, Champion International
Bud Clinch, Montana Loggers Association
Jim Jensen, Montana Environmental Information Center
Don Allen, Montana Wood Products Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Tucker Hill said that spiking trees is an unfortunate situation. He thinks the vandals are making political and terrorist statements. When a piece of metal is hit by a saw it goes in every direction. Champion International thinks this bill is necessary.

Bud Clinch represents about 600 family-owned logging operations scattered throughout Montana. Mr. Clinch is aware of the many dangers associated with the logging and lumbering process. Workers, whether they are in the woods or in the mill, must make observations and react constantly to safeguard their personal safety. He is also aware of the increasing controversy over allocation and utilization of our natural resources. Activities such as spiking trees are intended to prevent timber harvest by presenting a dangerous condition when these trees are milled or processed. When foreign objects are hit by band saws, chippers and planers not only is lumber recovery minimized and expensive equipment damaged but potentially lethal fragments are hurled out. Financial losses associated with damaged timber, damaged equipment, and down time is insignificant compared to the potential for personal injury. Mr. Clinch is concerned for the senseless increased hazards to workers. While the incidents of such sabotage have been minimal, any measure serving as a deterrent to such activities would be worthwhile.

Jim Jensen stated that any excuse is unacceptable when a few people who call themselves environmentalists engage in spiking tress and destroying personal and real property while endangering lives. The EIC does not support it, never has, and never will.

Don Allen supports this legislation for all the reasons outlined. He was pleased that Mr. Jensen chose to speak because it is not the mainstream people that have many times been blamed for this activity. There are just a few who call have a total disregard for the safety and human values of the people involved in this industry. Mr. Allen believes it is necessary to do something to discourage this sort of behavior in the future.

Questions from Committee Members:

Senator Yellowtail wondered if spiking wasn't already

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illegal.

Senator Van Valkenburg doesn't think this bill is necessary. He thinks existing law in the bill takes care of the situation right now.

Senator Yellowtail stated that spiking is already illegal under the terms of the criminal mischief statute.

Representative Swift did not question that spiking could be prosecuted under the language set forth in the codes. He thinks that this is such a vicious, careless action that it needs to be focused on. He thinks, stating it clearly in the codes would have some deterring effect. He won't argue the legal question at all.

Senator Yellowtail asked Representative Swift was aware of anyone brought to court for spiking.

Representative Swift said there is a law in California where he got the basic legal wording for the spiking bill. California has a mandatory sentence for anyone involved in this kind of activity.

Senator Weeding said Representative Swift spoke about contaminating and draining the oil in equipment. Would this bill help in cases when the oil was drained?

Representative Swift said the amendment is strictly zeroed in on "tree spiking."

Senator Yellowtail asked if it was reasonable to expect that someone could be found guilty of spiking unless he was found in the act.

Representative Swift said he couldn't answer that question, but wants it made clear to anyone spiking trees that the courts can prosecute them.

Senator Van Valkenburg asked Representative Swift if he wanted this bill to have the effect of reducing the maximum penalty that somebody could suffer from 10 years in prison down to 6 months in the county jail.

Representative Swift said he didn't want anybody to be let off.

Senator Van Valkenburg said last session a law called criminal endangerment was passed that a lot of county attorneys are using now that deals with this very situation. What it says is that a person who knowingly engaged in conduct that creates a substantial risk of

death or serious bodily injury to another commits the offense of criminal endangerment which is punishable by 10 years in prison and/or $50,000 fine. If we pass HB 172 that specifically treats this kind of conduct as criminal mischief, then Senator VanValkenburg suspects the courts will say the legislature never intended to treat putting spikes in trees as criminal endangerment because it put it in the criminal mischief part of the code.

Representative Swift said he wants to prosecute the people that are engaged in this activity. He thinks both of these codes would apply.

Senator VanValkenburg's concern is that sometimes people figure that a law should be put on the books when, in fact, there is already a law. Since no one has been caught and no one has been prosecuted, just because California did it doesn't mean Montana has to.

Representative Swift said Montana does not have to do it because California did it. He said the problem is in Montana and he wants some attention directed to it.

Senator Keating asked if California's penalties were closer to the criminal endangerment penalties of Montana rather than criminal mischief.

Representative Swift responded he did not know.

Senator Weeding asked if this was really a serious problem in the Missoula area and was it on the upswing.

Representative Swift said there was one incident in 1985 and in checking with the forest service office in Missoula, he found out there were two others plus the one he mentioned specifically in the Flathead area. He didn't go to Plum Creek or all the other private operators. In the period from 1987 to November, 1988, Champion International had at least a half dozen incidents where they lost equipment or had to spend more time in the trees using metal detectors.

Senator Weeding wondered how trees were spiked so that the spike couldn't be seen.

Representative Swift said vandals would select Ponderosa Pine or Larch, which have a bark that is an inch to an inch and a half thick and bury the heads of ten penny spikes or drive small railroad spikes into the trees. The vandals don't always put the spikes in the same place in the trees. They climb the trees and put them

in unsuspected places.

Senator Keating thought it would be a good idea for Representative Swift to meet with his people and decide if this bill should be withdrawn and not acted on. He said this bill has a lot of support but it's going to be difficult for legislators to say that on a technicality, they decided not to pass the bill. Senator Keating doesn't think the bill should be passed if it is not in the industry's best interest.

Representative Swift said he would leave that up to the committee.

Bob Thompson described a technical flaw in the title of the bill, which Representative Swift agreed needs an amendment.

Closing by Sponsor:

Representative Swift closed by thanking the committee.

EXECUTIVE ACTION

HB 362 On HB 362, Senator Keating asked Bob Thompson to describe a possible technical amendment.

Bob Thompson said page 1, line 7 should say "dispose of certain lands."

Senator Keating said the committee is amending the title and section 77-2-302.

Senator Jenkins moved the amendment.

Senator Keating said it has been moved that page 3, line 14, be amended following the word "and," adding the word "certain." Motion carried.

Senator VanValkenburg expressed a reservation about the liability the state might endure by virtue of transferring the title. He doesn't know if there is any cure except that there has to be good people using good judgment. If Congress changes the superfund law, Montana might get stuck holding some of the land. He doesn't understand how the transfer goes immediately to the private party.

Senator Jenkins understands the agreement is made before the state assumes the title.

Senator Stimatz said in regard to the ARCO smelter situation

DATE 3-28-89

COMMITTEE ON NATURAL RESOURCES

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
JEROME ANDERSON	SHELL WESTERN E&P	HB 133	✓	
Janelle Fallan	MT Petroleum	HB133	✓	
Rod Sandahl	State Lands	HB133	X	
Jim Jensen	MEIC	HB172	✓	
Doug ABELIN	MONTANA OIL & GAS	HB133	✓	
Harold Ade	CENEX	HB133	✓	
TUCKER HILL	Champion Int'L	HB172	✓	
JACK HAYNE	SRF	HB133	✓	
Don Allen	MT. Wood Products Assn.	HB 172	✓	
John North	Dept. of State Lands	HB133	✓	
BUD CLINCH	MONTANA LOGGING	HB172	✓	

(Please leave prepared statement with Secretary)

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By THOMAS F. KEATING, on March 6, 1989, at 1:00 p.m. in Room 405 of the State Capitol.

ROLL CALL

Members Present: Senators: Thomas Keating, Chairman, Larry Tveit, Fred Van Valkenburg, Loren Jenkins, Lawrence Stimatz, Pete Story, Bill Yellowtail, Elmer Severson, Cecil Weeding, Dorothy Eck, Jerry Noble, and Darryl Meyer.

Members Excused: None

Members Absent: None

Staff Present: Helen McDonald and Bob Thompson

HEARING ON HB 679

Presentation and Opening Statement by Sponsor:

Representative Ed Grady, District #47, sponsored this bill requiring a small miner who has a placer or dredging operation to reclaim land disturbed by the operations. The bill originally addressed only those operations larger than two acres but the miners wanted to include all small mining operations. The amendments address the reclamation standards set by the Department of State Lands (DSL). (Exhibit 1) A maximum bond limit is set to not put a hindrance on the small miner and put him out of business. The bill is designed mainly to address the reclamation problem. In the past, the state has come in and reclaim this land. The amendments set cap of $5,000 per operation. The bond will never be over $5,000 and in most cases much less because this bill only addresses whatever portion was disturbed with the present operation. The DSL will look at the filing application and assess the approximate cost to reclaim the land.

List of Testifying Proponents and What Group they Represent:

Gary Langley, Montana Mining Association
Lee Reynolds, Small Miner

Senator Jenkins was wondering, since the constitution was passed in 1972, why wasn't this done 20 years ago.

John North said "we erred."

Senator Story said if the legislature passed a bill that said that every small miner will reclaim the land and failure to do so is a misdemeanor, then who gets sued?

John North said the state would be sued.

Closing by Sponsor: Representative Grady closed by saying that neither MEIC nor the department prompted him to sponsor this bill. The Environmental Protection Agency will probably have new rules on BLM land within the next year. Representative Grady felt "we are the solution and not the problem." Representative Grady said he has had bad cases of placer mining in his district, such as weed patches, land and erosion problems, soil problems from the old mines, and dredging operations that were not reclaimed. The miners came in, took the gold and went away.

Representative Grady asked who is going to stand the cost of reclaiming that land and who is suffering the consequences? The taxpayers of Montana. The rancher owns the land along the creeks and streams but can't go in there and do anything with the streams anymore. Underground tank legislation is coming down on the ranchers and farming operations are being controlled.

Representative Grady concluded by saying that the miners, DSL and myself spent many hours on this bill and came up with these amendments, which were promised when the bill came out of the House. If the amendments are taken off, there isn't a bill.

EXECUTIVE ACTION ON HB 172

Senator Story proposed an amendment to this bill. (Exhibit 3) Senator Story moved the amendment. Senator Van Valkenburg wanted to add after "includes", "but is not limited to". Senator Van Valkenburg moved the amendment to the amendment. Both amendments passed.

Senator Jenkins moved HB 172 to be concurred as amended. Motion carried.

HEARING ON SB 327

Presentation and Opening Statement by Sponsor:

ROLL CALL

NATURAL RESOURCES COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-6-89

NAME	PRESENT	ABSENT	EXCUSED
Chairman Tom Keating	✓		
Vice-Chairman Larry Tveit	✓		
Senator Fred VanValkenburg	✓		
Senator Loren Jenkins	✓		
Senator Darryl Meyer	✓		
Senator Lawrence Stimatz	✓		
Senator Pete Story	✓		
Senator Bill Yellowtail	✓		
Senator Elmer Severson	✓		
Senator Cecil Weeding	✓		
Senator Dorothy Eck	✓		
Senator Jerry Noble	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration HB 172 (third reading copy -- blue), respectfully report that HB 172 be amended and as so amended be concurred in:

Sponsor: Swift (Story)

1. Title, line 6.
Following: line 5
Strike: "MISCHIEF"
Insert: "ENDANGERMENT"
Following: "TO"
Strike: "PURPOSELY OR"

2. Title, lines 6 through 9.
Following: "KNOWINGLY"
Strike: remainder of line 6 through "OTHER" on line 9
Insert: "PLACE IN A TREE, LOG, OR ANY OTHER WOOD A SUBSTANCE FOR THE PURPOSE OF DAMAGING A SAW OR OTHER WOOD HARVESTING, PROCESSING, OR MANUFACTURING"

3. Title, line 10.
Strike: "45-6-101"
Insert: "45-5-207"

4. Page 1, line 13, through page 3, line 2.
Strike: section 1 in its entirety
Insert: "Section 1. Section 45-5-207, MCA, is amended to read:

"45-5-207. Criminal endangerment -- penalty. (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. <u>This conduct includes, but is not limited to, knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.</u>

(2) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.""

AND AS AMENDED BE CONCURRED IN

Signed: Thomas F. Keating
Thomas F. Keating, Chairman

3/7/89 2:24 p.m.

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 3-6-89
BILL NO. HB 1727

Possible Amendments to House Bill No. 1727
Third Reading Copy

Requested by Senator Pete Story
For the Senate Committee on Natural Resources

March 4, 1989

1. Title, line 6.
Following: line 5
Strike: "MISCHIEF"
Insert: "ENDANGERMENT"
Following: "TO"
Strike: "PURPOSELY OR"

2. Title, lines 6 through 9.
Following: "KNOWINGLY"
Strike: remainder of 6 through "OTHER" on line 9
Insert: "PLACE IN A TREE, LOG, OR ANY OTHER WOOD A SUBSTANCE FOR THE PURPOSE OF DAMAGING A SAW OR OTHER WOOD HARVESTING, PROCESSING, OR MANUFACTURING"

3. Title, line 10.
Strike: "45-6-101"
Insert: "45-5-207"

4. Page 1, line 13, through page 3, line 2.
Strike: section 1 in its entirety
Insert: "**Section 1.** Section 45-5-207, MCA, is amended to read:
"**45-5-207. Criminal endangerment -- penalty.** (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.""

2

HB 0172/03

HOUSE BILL NO. 172

INTRODUCED BY SWIFT, REHBERG, GIACOMETTO, GOULD, HOFFMAN, COBB, DRISCOLL, OWENS, THOMAS, ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING IT CRIMINAL ~~MISCHIEF~~ ENDANGERMENT TO ~~PURPOSELY OR KNOWINGLY INSERT INTO A TREE, LOG, OR PIECE OF WOOD THAT IS INTENDED TO BE HARVESTED, PROCESSED, OR MANUFACTURED A SUBSTANCE THAT IS HARD ENOUGH TO DAMAGE A SAW OR OTHER~~ PLACE IN A TREE, LOG, OR ANY OTHER WOOD A SUBSTANCE FOR THE PURPOSE OF DAMAGING A SAW OR OTHER WOOD HARVESTING, PROCESSING, OR MANUFACTURING EQUIPMENT; AND AMENDING SECTION ~~45-6-101~~ 45-5-207, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 45-6-101, MCA, is amended to read:~~

~~"45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if he knowingly or purposely:~~

~~(a) injures, damages, or destroys any property of another or public property without consent;~~

~~(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;~~

~~(c) damages or destroys property with the purpose to defraud an insurer; or~~

~~(d) places in a tree, log, or any other wood, any steel, iron, ceramic, or other substance sufficiently hard WITH THE PURPOSE to damage a saw or other wood harvesting, processing, or manufacturing equipment and he knows that the wood is intended to be harvested, processed, or manufactured; or~~

~~(d)(e) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.~~

~~(2) A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the release of state jurisdiction over the person convicted.~~

~~(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of $300, injures or kills a commonly domesticated hoofed animal, or~~

~~causes-a-substantial-interruption-or--impairment--of--public communication,--transportation,--supply--of--water,--gas,-or power,-or-other-public-services,-he-shall-be-fined-an-amount not-to-exceed-$50,000-or-be-imprisoned-in-the--state--prison for-any-term-not-to-exceed-10-years,-or-both.~~"

SECTION 1. SECTION 45-5-207, MCA, IS AMENDED TO READ:

"**45-5-207. Criminal endangerment -- penalty.** (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes, but is not limited to, knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

-End-